

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MORRIS GRAPHICS, INC.

v.

C.A. No. 97-668-T

CASEY PRINTING, INC.,

FINDINGS, CONCLUSIONS AND ORDER

ERNEST C. TORRES, Chief United States District Judge.

Morris Graphics, Inc. brought this action to recover the balance allegedly due on the purchase price for a used printing press that it sold to Casey Printing, Inc. Casey has counter-claimed for the expenses it allegedly incurred to bring the press up to the standard specified in the contract. The matter was tried before this Court sitting without a jury. My findings of fact and conclusions of law are as follows.

Findings of Fact

1. On August 5, 1997, Morris Graphics, Inc. and Casey Printing, Inc. entered into a Conditional Sales Contract and Security Agreement (the "Agreement") wherein Morris agreed to sell and Casey agreed to buy one used Komori printing press L540 III Serial Number 435 with various attachments described in

Exhibit A to the Agreement.

2. The Agreement required Morris Graphics to refurbish the press and defined "refurbished" to mean "cleaned, painted as needed, inspected and parts replaced as needed."
3. The Agreement also required Morris to install the press at Casey's shop in King City, California.
4. Casey was required to provide, at its sole cost, a "suitable foundation, adequate floor conditions, construction, exhaust ducting for the press or its component parts, and/or electrical wiring required, as well as labor and materials (for carpentry, plumbing, masonry, etc.) necessary to remove obstructions, and/or locate the Equipment and any outside labor not authorized in writing by [Morris]."
5. Installation by Morris Graphics was defined to mean that the press must:
 - 1) produce commercially acceptable printing at its normal speed;
 - 2) accurately register at its normal speed; and
 - 3) be successfully tested.

6. The Agreement contained a "Limited Warranty" provision under which Morris warranted that, at the completion of installation and testing, the press would produce commercially acceptable printing and accurate register at its normal speed on suitable paper. The warranty terminated when installation and testing were completed.
7. The purchase price was \$600,000 for the press plus \$50,000 for labor, freight and installation costs.
8. The Agreement required Casey to pay \$25,000 to Morris upon the signing of the agreement, and an additional \$525,000 prior to shipment. The remaining \$100,000 was to be paid upon completion of installation.
9. The Agreement has a choice of law clause providing that all rights and obligations under the contract shall be governed by the laws of the State of Rhode Island.
10. On September 5, 1997, Bill and Richard Casey, the principals in Casey Printing, visited Morris's place of business in Rhode Island and examined the press.
11. At that time, the press had been disassembled for shipping and

some parts had been packed in boxes. Consequently, the Caseys were unable to see the press in operation but they were able to view most of the components.

12. After examining the press, Bill Casey paid Lance Burden, Morris' representative, the \$525,000 required before shipping.
13. The press was delivered to Casey on Monday, September 8, 1997, and was examined by Randy Falen, a technician hired by Morris Graphics to install the press.
14. Falen discovered that several parts necessary to make the press operational were missing.
15. Falen ordered the parts from the manufacturer, which billed Casey \$2,394.60.
16. The manufacturer's invoices bear the reference number "435".
17. Exhibit FF, which is a list of the items for which Casey seeks recovery, refers to those invoices in entries MM, NN, OO, PP, VV, and WW.
18. On Tuesday, September 16, 1997, after installing the parts

that he ordered, Falen successfully completed a "dry run" of the press without ink.

19. Falen worked on the press for several more days and left Casey Printing on Friday, September 19, 1997. At the time of Falen's departure, the press was operable but some minor parts still were missing, and the press was not, yet, functioning in accordance with the required standards.
20. On Monday, September 22, 1997, Bill Casey sent a fax to Burden informing Burden that the press was not fully operational and listing several items that needed to be fixed or replaced. Casey also informed Burden that Robert Saunders, a Komori mechanic, was scheduled to remove another press from Casey Printing, and he suggested that Morris allow Saunders to complete installation of the L540 press.
21. Burden agreed but made it clear that he was approving only the work listed on Bill Casey's September 22 fax, except for work on the Lateral Register Control board which Burden stated would be performed by Morris.
22. On September 25, 1997, Saunders began working on the press. He corrected most of the problems referred to in Casey's

September 22 fax, but identified additional work necessary to make the press fully operational.

23. Komori charged Casey \$10,653.25 for the work performed by Saunders. See, Exhibit GGGG.
24. On September 30, Bill Casey wrote to Burden requesting that the additional work identified by Saunders be performed.
25. At that time, Morris Graphics no longer was conducting business, but Burden still was acting on Morris' behalf.
26. Burden authorized Casey to repair the cylinder damage described in Casey's September 22 fax, and to deduct the cost from the unpaid balance of the contract price.
27. However, Burden failed to respond to the request for additional work contained in Casey's September 30 letter.
28. Casey hired Tom Sivula, a technician, to fix the cylinders. Sivula's fee was \$6,265.19, an amount that Morris concedes should be credited to the balance it claims to be due from Casey.

29. Because the press was important to the conduct of Casey's business, Casey also made arrangements to have the additional work referred to in its September 30 letter done without Morris' authorization.
30. Most of this additional work consisted of correcting electrical problems, which were alluded to in Casey's September 22 and September 30 letters.
31. Casey hired Rai Gurdev, an electrical technician, who worked on the press from October 1 through October 3, 1997 and again on October 9, 1997.
32. In order to complete his work, Gurdev ordered several parts for which Casey was billed.
33. Gurdev was paid the sum of \$3,312.00 for his labor. See, Exhibits QQQ and RRR.
34. Taking into account credits for parts that were returned, the net cost of the parts was \$8,246.37.
35. All of the work performed by Gurdev was necessary to complete the installation of the press in accordance with the terms of

the Agreement.

36. The cost of additional work required to correct problems listed in Casey's September 22 and September 30 letters was \$9,630.78 . See, Exhibits GG, HH, II, JJ, LL, QQ, RR, TT, XX&YY (2 exhibits covering one invoice), ZZ, GGG, III, LLL, NNN, OOO, PPP, SSS and UUU.
37. Casey also paid King City Electric to upgrade its electrical service to a level necessary to operate the press. However, even if, as Casey claims, Burden erroneously stated that Casey's service was adequate, Casey is not entitled to recover for the amount paid to King City because, under the Agreement, Casey was responsible for providing the electrical connections required to operate the press.
38. Until November 28, 1997, the press was not capable of operating in accordance with the standards prescribed in the Agreement.
39. On November 28, 1997, the press was fully operational and performed its first five-color job.
40. The total amount expended by Casey Printing to bring the press

into conformity with the requirements specified in the Agreement is \$38,107.59.

Conclusions of Law

1. The agreement between the parties is a contract for the sale of goods, controlled by Article Two of the Rhode Island Uniform Commercial Code (UCC), R.I.G.L. §§ 6A-2-101, et. seq.
2. Under § 2-709(1)(a) of the UCC, a seller is entitled to recover the contract price of accepted goods when the price comes due.
3. Casey's actions constituted acceptance of the press within the meaning of § 2-606.
4. Under the terms of the agreement, the remainder of the purchase price became due when installation was completed.
5. Installation was completed on November 28, 1997, when the press became fully operational.
6. However, because Morris failed to complete the installation, the press that it delivered did not conform to the

requirements of the Agreement.

7. Under section 2-714 of the UCC, a buyer who has accepted nonconforming goods, and given notification of breach to the seller pursuant to § 2-607(3), may recover damages for the nonconformity determined in any manner which is reasonable.
8. The various telephone calls and faxes from Casey to Burden constituted notice of the breach sufficient to satisfy § 2-607(3).
9. The measure of damages for Morris' breach is the amount reasonably expended by Casey to bring the press into conformity with the requirements of the Agreement, namely, \$38,107.59.
10. Under § 2-717, that amount may be deducted from the \$100,000 balance due on the purchase price.
11. Therefore, the net amount owed by Casey Printing to Morris Graphics is \$61,892.41.
12. There is no need to consider Casey's claims for breach of warranty because the damages to which Casey would be entitled,

if successful, would be the same as the damages recoverable for breach of contract.

13. Morris' claims for attorney's fees and costs are made pursuant to R.I.G.L. § 9-1-45 and § 9-22-5, respectively.

Section 9-1-45, Attorney's Fees in Breach of Contract Actions, provides:

The court may award a reasonable attorney's fee to the prevailing party in any civil action arising from a breach of contract in which the court:

- (1) Finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party; or
- (2) Renders a default judgment against the losing party.

Section 9-22-5, Recovery of Costs by Prevailing Party, provides:

In civil actions at law, the party prevailing shall recover costs, except where otherwise specially provided, or as justice may require, in the discretion of the court.

14. Both sections confer broad discretion on the Court to determine whether costs and fees should be awarded.

15. Moreover, under § 9-1-45, awards of attorney's fees are limited to cases in which there is "a complete absence of a justiciable issue of law or fact raised by the losing party."

16. Here, Casey did raise justiciable issues as evidenced by the fact that it succeeded in establishing that the press did not

conform to the requirements of the Agreement.

17. Because Casey raised substantial justiciable issues; and, because Morris prevailed only partially on its claim, it would be unjust to award attorney's fees and costs to Morris.

Conclusion

18. For all of the foregoing reasons, the clerk is directed to enter judgment in favor of Morris Graphics, Inc., in the amount of \$61,892.41 plus interest from November 28, 1997 as provided in R.I.G.L. § 9-21-10.

By Order,

Deputy Clerk

ENTER:

Ernest C. Torres
Chief United States District Judge

Date: